

REMARKS

In the Office Action, pending claims 1-37 were restricted as follows:

Group I (claims 1-29) drawn to a system for monitoring operations associated with a cleaning system, classified in class 700, subclass 244;

Group II (claims 30-37) drawn to a method for monitoring operations associated with a cleaning system, classified in class 700, subclass 266; and

The application was further restricted as containing claims directed to four patentably distinct species (Species I-IV) of the claimed invention.

Both the group and species restrictions are addressed in the remarks that follow:

A. Group Restriction

In order for a restriction requirement between claims to be proper, the following criteria must be satisfied:

(1) The Office Action must establish that the inventions are either independent or distinct; and

(2) The search and examination of the entire application as pending without restriction/election must present a serious burden on the Examiner. *See* Manual of Patent Examining Procedures (“MPEP”), at §803 (emphasis added).

The Office Action purports to establish that Groups I and II are distinct from one another by stating that “the monitoring process can be practiced by another cleaning system having different monitoring devices or combination thereof.” Without addressing the first requisite under MPEP §803 (i.e., whether these groups are indeed distinct from one another), Applicant respectfully traverses this restriction by suggesting that serious burden would not be placed on the Examiner if restriction were adopted between the aforementioned groups.

For example, a proper search of Groups I and II would include searching in class 700, subclasses 244 and 266 for each Group. Both subclasses 244 and 266 are indented under subclass 90, which is defined as “Subject matter wherein a data processing or calculating computer apparatus (or corresponding method for performing data processing or calculating operation) is designed for or utilized in a particular art device, system, process or environment, or is utilized for the solution of a particular problem in a field other than mathematics (arithmetic processing per se is classified elsewhere).” Manual of Patent Classification, December 2002 (emphasis added). Applicant respectfully notes that neither subclass 244 nor subclass 266 are

limited to a method or system respectfully, as asserted on page 2 of the Office Action. Indeed, by virtue of being indented under subclass 90, both of these subclasses inherit the characteristic of pertaining to both systems and corresponding methods. Even further, the title of subclass 266 explicitly reads “Chemical process control or monitoring system.” Manual of Patent Classification, December 2002 (emphasis added).

In sum, the second requisite of MPEP §803 is not satisfied and the instant restriction requirement is therefore not believed proper regardless of the purported distinctiveness between Groups I and II. Applicant therefore respectfully requests withdrawal of the present restriction requirement. Nevertheless, because Applicant is required to elect a group under 35 U.S.C. §121, Applicant provisionally elects the claims of Group I for further prosecution in the present application. Should the restriction requirement not be withdrawn, claims 30-37 are hereby withdrawn from consideration but are not cancelled. The species restrictions are now addressed and a provisional species election to coincide with this group election is provided in the comments that follow.

B. Species Restriction

In order for a restriction requirement among distinct, but related inventions to be proper, MPEP §808.02 requires that, in addition to showing that the inventions are distinct with respect to one another, the Examiner establish by appropriate explanation at least one of the following:

(1) That each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search;

(2) Even if classifiable together under the same field of search, that each distinct subject has formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors; or

(3) Even if classifiable together under the same field of search, it would be necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists. *See* MPEP §808.02.

Applicant respectfully traverses the aforementioned species rejections on the premise that the Office Action does not establish any one of the three requisites for proper restriction among distinct, but related inventions. Indeed, the Office Action does not even assert that each of the four species would be classified in separate classifications or be searched in separate fields of search. The Office Action fails altogether to meet the standard set forth in MPEP §808.02, and

therefore, Applicant respectfully requests that the present restriction requirement among species be withdrawn.

Nevertheless, because Applicant is required to elect a species under 35 U.S.C. §121, Applicant provisionally elects Species III for further prosecution in the present application. As stated in the Office Action, Claims 1, 21 and 30 are generic with respect to all four species listed in the Office Action, and therefore are entitled to being examined in the present application even if the instant restriction requirement is not withdrawn. Even further, claims 2-6, 8-20, 22-27 and 31-37 are also generic with respect to all four species, and therefore are entitled to being examined in the present application even if instant restriction requirement is not withdrawn, subject of course, to the provisional Group election above. With regard to the elected species, claim 29 reads on at least one of the features of Species III, and therefore claim 29 is also entitled to being examined in the present application even if the instant restriction requirement is not withdrawn. For example, claim 29 reads on the feature of provisionally elected species III that the cleaning system is a warewash machine.

In sum, should the restriction requirement among species not be withdrawn for failure to satisfy the requisites of MPEP §808.02, Applicant requests that claims 1-6, 8-27 and 29-37 be searched and examined pursuant to this provisional species election. Claims 7 and 28 pertain to non-elected species, but however depend from a generic claim. Should the underlying generic claims be deemed allowable, Applicant is entitled to consideration of claims 7 and 28 in the present application.

C. **Conclusion**

In light of the foregoing remarks, both the group and the species restrictions in the June 10th Office Action are believed improper, and hence, these restrictions should be withdrawn. Nevertheless, and because Applicant is required under 35 U.S.C. §121 to elect both a group and species, such elections have been made. Should the Examiner have any remaining questions or concerns, he is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns.

No fees are believed due with the submission of this Reply. However, if this understanding is in error, please charge any additional fees to Deposit Account No. 13-2725. Also, please credit any overpayment to Deposit Account No. 13-2725.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "David D. Wier". The signature is written over a horizontal line.

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